

PUBLIC HEARING

SEPTEMBER 6, 2023

A public hearing of the Council of the County of Kaua'i was called to order by Ross Kagawa, Chair, Finance & Economic Development Committee, on Wednesday, September 6, 2023, at 8:41 a.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Addison Bulosan  
Honorable Bernard P. Carvalho, Jr.  
Honorable Felicia Cowden  
Honorable Bill DeCosta  
Honorable Ross Kagawa  
Honorable KipuKai Kualii

Excused: Honorable Bill DeCosta  
Honorable Mel Rapozo

The Clerk read the notice of the public hearing on the following:

"Bill No. 2901– A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*RPT Reform Tax Year 2024*), and

Bill No. 2902 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*RPT Reform Tax Year 2025*), and

Bill No. 2903 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Long-Term Gap Housing Rental*), and

Bill No. 2904 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Separated Married Persons*),"

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on August 9, 2023, and published in The Garden Island newspaper on August 15, 2023.

The following communications were received for the record:

1. Burch, Roger and Michele, dated September 5, 2023 (*Bill No. 2901 and Bill No. 2902*)
2. Danaher, Lynn, dated September 5, 2023 (*Bill No. 2901*)
3. Helton, Jonathan, dated September 6, 2023 (*Bill No. 2901*)
4. Helton, Jonathan, dated September 6, 2023 (*Bill No. 2902 and Bill No. 2903*)
5. Jennings, Simon, dated September 5, 2023 (*Bill No. 2901 and Bill No. 2902*)

6. Jones, Robert Trent, Jr. and Jones, Claiborne S., dated September 4, 2023  
(*Bill No. 2901 and Bill No. 2902*)
7. Jones, Taliaferro, dated September 5, 2023 (*Bill No. 2901 and Bill No. 2902*)
8. Sheehan, Patricia W., dated September 5, 2023 (*Bill No. 2901*)

JADE K. FOUNTAIN-TANIGAWA, County Clerk: We have written testimony and we also have registered speakers. The first registered speaker is Mauna Kea Trask, followed by Taliaferro Jones.

(*Note: Mauna Kea Trask was not present.*)

TALIAFERRO JONES: Good morning. My name is Taliaferro Jones. "Dear Honorable Chair and Councilmembers. *Mahalo* for the opportunity to submit this testimony and to express my sincere concern regarding Bill Nos. 2901 and 2902 and the devastating effect it will have on the local nonprofit organizations the Nuhou Corporation ('Nuhou') and Waioli Corporation ('Waioli'). First, please let me introduce myself. My name is Taliaferro Jones. I earned my Bachelor of Arts (B.A.) in Art History and Bachelor of Fine Arts ('BFA') from Tufts University. After graduating, I studied fine arts in Canada and Spain and earned my Master of Arts Degree ('MA') in Museum Studies from Johns Hopkins University. I have been blessed to be the Executive Director of Nuhou and Waioli, a 501(c)(3) organization for the past year, and although I have managed art galleries and museums both nationally and internationally, I can confidently say that Kaua'i and its people are the most beautiful and special that I have ever seen. Our purpose is to operate the Grove Farm Museum and its associated properties. To be clear, Nuhou is a nonprofit organization and although it operates the old Grove Farm historic properties, Nuhou is not affiliated with the commercial entity and large landowner commonly known as Grove Farm. Nuhou owns and operates the Grove Farm Museum located on Nāwiliwili Road and its adjacent properties, including the historic Kaipu camp, a row of nine board-and-batten worker houses constructed between 1913 and 1917, which adjoins the museum, and which is still used to house museum employees which keeps the camp's historic nature alive and to provide housing for its workers. Waioli's purpose is to operate the historic Waioli Mission House and its associated properties including the 24-acre parcel adjacent to the Waioli Mission House, which contains numerous *lo'i kalo* and a park area containing basketball courts and soccer fields that Waioli has provided to the community for recreational use for decades. All of Nuhou and Waioli's properties are on either the state and/or national historic registers and are an integral part of Kaua'i and its people history and culture. Although I applaud the intent of Bill Nos. 2901 and 2902 to seek to lessen the tax burden of Kaua'i's local residents and stem the destructive and disheartening tide of gentrification, I humbly ask you to reconsider the proposed amendment to Kaua'i County Code Section 5A-11.22 contained in Section 3. According to our financial analysis, depending on how the amendment is interpreted and implemented, Nuhou and Waioli's tax liabilities could increase anywhere between \$81,000.00 to \$245,000.00. Nuhou and Waioli's operations are not large money-makers and preserving historic sites according to state and federal guidelines comes at a tremendous cost. Even under the most conservative estimates, Nuhou and Waioli simply cannot bear this increased tax burden and Waioli and Nuhou would be forced to evaluate other options for our properties that may not give access to our properties in the same way in order to sustain ourselves. Possible results could be loss of housing for local workers and

substantially increased tax values for nearby neighboring properties, which will create the very problem that Bill Nos. 2901 and 2902 seek to prevent.”

Councilmember Kagawa: You just have a little more? You can continue.

Ms. Jones: “I kindly ask that Nuhou and Waioli be given time to present information to the Honorable Finance and Economic Development Committee at the upcoming committee meeting, so that I can explain our concerns in more detail and be a resource for you. In closing, I kindly offer that protecting local residents, stemming island wide gentrification and preserving and protecting Kaua‘i’s historic culture are not mutually exclusive and can absolutely both be achieved to the benefit of both. Thank you so much for your time and consideration.”  
*Mahalo nui loa.*

Councilmember Kagawa: Thank you. It is a perfect time that you came up, because next week there will be a Committee Meeting and I am sure that the Administration is listening, and they may even reach out to you to see how they can rectify the problem.

Ms. Jones: That would be lovely. Thank you so much.

Councilmember Kagawa: Are there any clarifying questions?  
Councilmember Cowden.

Councilmember Cowden: Does this include a house on Weke Road, too, there is a red house on Weke Road?

Ms. Jones: Yes, that is one of our properties.

SAM PRATT: It is not red, it is brown.

Councilmember Cowden: It looks red to me. Reddish/brown.

Mr. Pratt: Sam Pratt, president of Waioli Corporation, for the record. There is a red house that is privately owned.

Councilmember Cowden: That was the Faye house?

Mr. Pratt: Nothing to do with that.

Councilmember Cowden: This other house, the brown house, will that be impacted also?

Mr. Pratt: It is another one of our holdings and it could be impacted.

Councilmember Cowden: Does that have historical preservation? Is that on our list?

Ms. Jones: Yes, it does historic preservation and I think it is on that list. What is that house used for?

Mr. Pratt: As part of the museum experience, people can visit the home and try to experience the beach home. It was a family home one hundred (100) years ago, so when they visit there, they experience what they would have done.

Councilmember Kagawa: Are there further clarifying questions? What was the potential tax increase?

Ms. Jones: Up to two hundred forty-five thousand dollars (\$245,000).

Councilmember Kagawa: That is the increased amount of this legislation?

Ms. Jones: Yes, and that is a significant amount of our operating budget, actually.

Councilmember Kagawa: Yes, it is. Are there any further questions? Seeing none, thank you.

Ms. Jones: Thank you so much.

Councilmember Kagawa: Next speaker. Mauna Kea.

MAUNA KEA TRASK: *Aloha kākou.* For the record, Mauna Kea Trask *ko'u inoa*. I am here to testify on Bill Nos. 2901 and 2902. My testimony is a little longer than three (3) minutes, so if I could just stack them, I would really appreciate it. I appreciated what Kahu Jade said about heritage. I am here on behalf of the Waioli and Nuhou Corporations, two (2) organizations, like Taliaferro said, whose sole purpose is to protect, preserve, and maintain historic resources for all of us. I have been retained to analyze and evaluate Bill Nos. 2901 and 2902 and whether these bills will have a detrimental effect to my client's operations. After reviewing the bills and the August 9, 2023 Council Meeting, I concluded they will. The stated purpose of Section 3 of Bill No. 2901 is to amend Kaua'i County Code, Section 5A-11.22 to clarify the scope of the historical residential real property dedicated for preservation exemption and its definition of "residential." However, no clarification is made. Instead, the bill proposes to totally remove properties owned by nonprofits corporations from the ambit of the ordinance, meaning that the nonprofit organizations that preserve the maintain homes that are on the Hawai'i Register of Historic Places will no longer be able to qualify for crucial tax relief necessary for the protection and preservation of those properties that had been deemed significant to the history, architecture, archeologically, or culture of Kaua'i. Further, the bill restricts the definition of "residential" to include only those homes that are owner-occupied and that are not rented out for less than one hundred eighty (180) days. Although not stated, Section 3 of Bill No. 2901 appears to be directed at further limiting and restricting transient vacation rentals (TVRs), however this policy is misplaced for the following reasons amongst others. One,

removing beneficial tax programs designed to preserve and protect our historic and cultural resources is against State law and policy. Hawai'i law—from the Constitution to county rule—declares the historically cultural heritage of the State among its important assets and that the rapid, social, and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. Further, the legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation in all levels of government, and it shall be the policy of this state to promote the preservation and restoration of significant natural and historic resources, and to provide incentives to maintain and enhance historic, cultural, and scenic amenities. Two, this bill may constitute illegal “log rolling,” the very practice that Charter Section 4.02.B. is designed to prohibit. In total, there are at least twelve (12) separate and distinct purposes of Bill Nos. 2901 and 2902. The title of the bills could not be more broad, that is, Real Property Tax Reform, and although the breadth of the title may pass constitutional muster, it obfuscates what the individual sections of the bills actually do and makes it more difficult for the public to track what is really going on. In truth, there are at least twelve (12) separate bills here and the public should be educated as to each and every one. Three, counting tax policy should not conflate the duties of the Planning Department and the Department of Finance with regard to TVRs. Regulating TVRs is a very difficult job. Made more difficult when the United States (U.S.) District Court for the District of Hawai'i recently confirmed that TVR uses are residential uses as defined in State law. This is out of the case, Hawai'i Legal Short-Term Rental Alliance vs. City and County of Honolulu et al, No. 1:2022cv00247 – DKW RT October 13, 2022. As that case shows Kaua'i's policy defining TVRs as any rental less than six (6) months is illegal under State law, specifically Hawai'i Revised Statutes Sections 514E-1 and 514E-4. It is clearly violated by every local person renting their home month-to-month or less than one hundred eighty (180) days. By definition, I raise my children on Kaua'i in illegal TVRs for most of their childhood, because I rented month to month. In closing, I kindly reiterate my client's request to allow Waioli and Nuhou the opportunity to present their concerns to you in more detail at the upcoming Finance & Economic Development Committee Meeting. I believe that if we work together, we can find a solution that addresses the concerns that these bills are trying to solve without compromising Kaua'i's history and culture in the process. *Mahalo*.

Councilmember Kagawa: Thank you. Are there any clarifying questions? Councilmember Cowden.

Councilmember Cowden: About halfway through there, you had a sentence that you said, “This may constitute illegal law,” and then I could not understand you.

Mr. Trask: Log rolling.

Councilmember Cowden: What is it? Log rolling.

Mr. Trask: Yes, and that is the term as described. In Charter Section 4.02.B., it says every bill shall embrace but one subject that shall be expressed in its title, and Matt knows that it is broad. Courts are very hesitant to declare something illegal because of that, but basically what it sets to do is prevent



log rolling, and that is when you cram a bunch of different ordinances into one (1) bill because it may not pass...one (1) individually may not pass, but if you stack enough, then it will pass because everyone has a vested interest, it may constitute...I am not saying it does, but if you look at it, there are six (6) sections and they are all different. Each one, for clarity and good practice, would require their own individual bill. I just wanted to raise them.

Councilmember Cowden: While I do not disagree with you when you say that the U.S. government does these huge omnibus bills, that is about log rolling, right? I am hearing what you are saying.

Mr. Trask: Thank you. The reason why is because the August 9, 2023 Council Meeting really focused on the twenty percent (20%) issue and the three percent (3%) issue, and so the Leprosy...Historic, I think warrants its own attention, especially because you are talking about TVR issues and things like that.

Councilmember Cowden: Okay, thank you.

Councilmember Kagawa: Seeing no further clarifying questions, thank you. Next week Wednesday will be the day that we will be hammering it out with the Administration and the public and try to come to some type of decision. Next week Wednesday is our committee meeting for this item. Next registered speaker.

Ms. Fountain-Tanigawa: Sam Pratt.

Councilmember Kagawa: Next.

Ms. Fountain-Tanigawa: No further registered speakers.

Councilmember Kagawa: Is there anyone from the public wishing to testify? Alice.

ALICE PARKER: Alice Parker, for the record. I just wanted to clarify "log rolling." I think the expression arose with lubber jacks, you cut one (1) log and it goes down the river, and then pretty soon all these others gather, and pretty soon you have a logjam.

Councilmember Kagawa: Is there anyone else? Sherri.

SHERRI CUMMINGS: I was not here to speak on this. My name is Sherri Cummings, for the record. I agree with everything Mauna Kea said. Just one thing I wanted everyone to be cognizant of the fact is that I always talk about our rights and cultural appropriateness and who should be the ones to engage in these types of conversations so that we have support us as *kānaka* and *kama'āina*, because not everyone is fifty percent (50%). My European family is a big part of this fabric of Kaua'i also. When he speaks in terms of nonprofits doing good work, I just want in a small piece of what you support that always make sure that who is part of that board that I fight for any way is people of the *wahi* to be present to make the decisions that will impact us. Whether it be *ōhana*, whether it be gathering from the areas that is resources for us as people, whoever that nonprofit is, it is very important that we be

part of that process, because too much nonprofits are popping up all in the name of trying to save our culture and we are not in the room to discuss how. That is my *mana'o* for this *kuleana*.

Councilmember Kagawa: *Mahalo*, Sherri. Is there anyone else wishing to speak on this item? Thank you. Seeing none.

There being no further testimony on this matter, the public hearing adjourned at 9:04 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
County Clerk

:dmc

